IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

SMT. CHANDI BAI & ORS. V/S LAXMI LAL & ORS.

S.B.CIVIL SECOND APPEAL No. 37 of 1989

Date of Judgment : 6th November 2006

PRESENT
HON'BLE SHRI N P GUPTA,J.

Mr. JITENDRA CHOPRA, for the appellant
Ms. REKHA BORANA, for the respondent

BY THE COURT:

This appeal has been filed by the defendant, against the judgment & decree of the learned Addl. District Judge No.3, Udaipur dt. 6.1.1989, who partly allowed the appeal, and modified the decree of the learned trial court, and decreed the plaintiff's suit for eviction from first and second floor residential apartments. However, rest of the decree i.e. decree refusing eviction from the suit shop, was maintained.

No cross-objections have been filed by the plaintiff landlord.

The facts of the case are, that the plaintiff

filed a suit for eviction in the Court of learned Munsiff and Judicial Magistrate, contending interalia, that he has three storied shop at Nehru Bazar Udaipur, which was let out to the tenant at a monthly rent of Rs. 175/-, the tenant committed default. It was then pleaded, that he has sublet the second floor room. The plaintiff alleged that the defendant has caused substantial damage to many apartments of the property, resulting into the property not remaining fit for habitation. It is then alleged that the premises are required by the plaintiff for his business and residence. He is to retire from service on 31.8.82; he has three children, and a wife, apart from one widowed sister. Various other grounds were also taken.

The learned trial court found the defendant to have committed a default for the period October, 1981 to March, 1982. Then, the question of subletting was decided against the plaintiff. Likewise the question of causing damage to the property etc. covered by issue no. 3 was also decided against the plaintiff. Then, the issue no. 4, regarding reasonable and bonafide necessity was also decided against the plaintiff. Obviously issue no. 6, relating to comparative hardship was also decided against the plaintiff. Then, it was also found, that the plaintiff has failed to prove issue no. 5. Thus, the suit for eviction was dismissed. However, the plaintiff was held entitled to rent, and to that extent the suit was decreed.

Learned lower Appellate Court maintained the finding of the learned trial court on issue no.1, so also on issue no.2 relating to subletting, and issue no. 3 relating to causing damage to the property. Then, deciding issue no.4, relating to reasonable and bonafide necessity it was found, that the plaintiff is not certain as to what business he would do, as in para-5 of the plaint he had pleaded to be intending to carry on the business of cut-piece of clothes, Typing shop, and Tea Stall, while there is only one shop, and all these business cannot be carried on in one shop. It was also considered, that in evidence the plaintiff has deposed to be intending to set up Tea Stall, but he was not found to be having any experience. Then, the evidence about the requirement of residence was considered, and it was noticed, that the plaintiff desired to have the upper storey, **only if**, the shop is given to him. However, it was found, that the plaintiff is retired, and intends to set up a hotel in the shop, and for setting up Tea Stall no training is required. Thus, the plaintiff's requirement for shop was found to have been established, however, regarding the residential apartments, it was found, that the plaintiff has failed to prove his requirement; but then it was noticed, that the defendant is prepared to vacate these premises. However, deciding issue no.6 it was held, that the defendant would suffer greater hardship, in the event of being evicted from the shop. In

the result, the suit for eviction was decreed for the upper storey, and was dismissed qua the shop.

The appeal was admitted vide order dt. 28.3.1989, framing the following two substantial questions of law:-

> "(1) Whether the First Appellate Court has seriously erred in passing the decree for ejectment in respect of the two rooms on the first floor inspite of the finding that the reasonable and bonafide necessity of the rooms is not proved and also without considering the issue of hardship and partial eviction as contemplated by the second proviso of Sec. 14(2) of the Rajasthan Premises (Control of Rent & Eviction) Act ?
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> (2) Whether the First Appellate Court committed an error in not apportioning the rent of the suit shop after granting decree of ejectment in respect of the rooms?

Arguing the appeal, it was contended by the learned counsel for the appellant, that the learned lower Appellate Court was in error in decreeing the suit for eviction from the upper storey apartment, inasmuch as, the plaintiff has utterly failed to prove to be having any reasonable and bonafide necessity, for the residential apartments. Not only that, even the learned lower Appellate Court itself also recorded a positive finding, that the plaintiff's case for requirement of residential apartments is not established; notwithstanding that, eviction therefrom has been decreed, simply because the learned Court found, that the defendant was taken to be ready to

vacate these apartments. It was contended, that even if the defendant was ready to vacate the possession of the rooms, no decree for eviction could be passed, until and unless the plaintiff establishes reasonable and bonafide necessity. Elaborating the argument, it was contended, that the tenancy of the entire premises is one, and could not be split up, except by virtue of the provisions of Section 14 (2) of the Rajasthan Premises (Control of Rent & Eviction) Act, hereafter referred to as the Act, and that section comes into picture, only if, the plaintiff establishes his requirement, otherwise the tenancy cannot be ordered to be split. So far the appellant's being ready to deliver possession of the rooms is concerned, as noticed by the learned court below, that the plaintiff had clearly given out, that he does not want to take possession of the rooms, until and unless he is given possession of the shop. Thus, the readiness of the appellant had not been accepted by the plaintiff, therefore, also the appellant could not be ordered to be evicted from the rooms; therefore, the impugned decree for eviction is liable to be set aside.

Then, arguing substantial question no. 2, it was contended, that even if the impugned decree for eviction is upheld, even in that event, the learned lower Appellate Court was required to apportion the rent, for the premises allowed to be retained by the appellant. It is submitted, that the effect of non-apportionment is, that

notwithstanding the appellant having been deprived of the possession of the two stories of the building, he is continued to be under obligation to pay the same rent, as he is required to pay for the entire premises, and therefore, this Court should make appropriate apportionment of the rent, for the premises, allowed to be retained by the appellant.

Learned counsel for the respondent, on the other hand, supported the impugned decree. Learned counsel invited my attention to para-5 of the plaint wherein the plaintiff has pleaded to be requiring residential apartments reasonably and bonafide, for occupation of his family members, particularly two sons, and in corresponding para-5 of the written statement the defendant did not deny the said pleading. Then, in para-12, being para of additional pleas, the defendant categorically pleaded to be ready to vacate the first and second floor of the premises. In that view of the matter, in view of the language of the provisions of O. 12 Rule 6 C.P.C., the suit should have been decreed with respect to these apartments, even at the threshold, and no error can be found in the impugned decree, when the decree has been passed for these apartments. Reliance was placed on the judgment of Hon'ble the Supreme Court in J.J. Lal Pvt. Ltd. Vs. M.R. Murali, reported in 2002 S.C.-1061 specially para-14 and 17, so also another judgment of Hon'ble the Supreme Court in Hira

Lal Vs Barot Raman Lal reported in AIR 1993 SC-1449 specially para-19. Then, it was contended that Narendra, P.W.4, the son of the plaintiff has clearly established the existence of necessity of the room for the family. Likewise P.W.2 Fatehlal has also deposed it, and thus the need of the plaintiff is clearly proved. Then, it was submitted, that even the defendant D.W.1 has admitted the plaintiff to be requiring the shop, and has also admitted the number of family members of the plaintiff, and the premises available with the plaintiff. Thus, even from the defendant's evidence the plaintiff's necessity for the residential apartments is established. Learned counsel relied on the judgment of Hon'ble Supreme Court, in Bega Begum Vs. Abdul, Ahad Khan, reported in AIR 1979 SC-272 to contend, that even if the plaintiff himself has not deposed about bonafide requirement of the residential premises, and if his son P.W.4 and witness P.W.2 has deposed it, still on that basis the bonafide necessity of the plaintiff, as pleaded is sufficiently proved by that evidence. Then, the learned counsel, on the authority of judgment of Hon'ble the Supreme Court, in Banarasi Vs. Ram Phal, reported in AIR 2003 SC-1989, contended that even though the plaintiff has not filed cross objections against the findings of the learned trial court on the question of the reasonable and bonafide necessity of the plaintiff having not been proved for residential apartments, still since the decree for eviction therefrom has been passed, the landlord is

entitled to support the decree, by contending that the bonafide necessity is established, even without filing cross objection.

Learned counsel for the appellant on the other hand in rejoinder submitted that the plaintiff has not deposed anything about the requirement of residential apartment for his family. Not only that he has positively asserted that he does not want the residential premises until and unless the decree for eviction from shop is passed. This shows that if the decree for eviction is not passed for the suit shop, he does not have the requirement of the residential apartment. In that view of the matter, when it is admitted by the plaintiff that plaintiff does not require the residential apartment, simply because out of good grace the defendant offered to be ready to vacate those apartment, learned courts below do not get any jurisdiction to pass a decree for eviction unless bonafide necessity is found to have been proved, and therefore, the impugned decree is liable to be set aside.

I have considered the submissions, and have gone through the record. In my view it is established legal position, as held by Hon'ble the Supreme Court, in S. Sanyal Vs. Gian Chand, reported in AIR 1968 SC-438, and in Habibunnissa Begum Vs. G.Doraikannu Chettiar, reported in JT 1999(9) SC-286, that the contract of tenancy is one, and

cannot be split, and is permitted to be split only by the relevant provision of the Rent Control Law, (Section 14(2) of the Act in the present case).

I need not recapitulate the findings of the learned lower Appellate Court, which have substantially been recapitulated above. Apart from the fact, that I have gone through the entire evidence available on record as well, and find, that the plaintiff Laxmilal, in his entire statement, has not said a word about requiring upper storey premises, rather, on the defendants offering to vacate them, he gave out, not to be ready to take them unless the shop is vacated. Then even so far as the plaintiff's son is concerned, he has also admitted, that they are already living in a three storied house, in which, on the ground floor is the shop of Mohan Bai (plaintiff's sister), and on upper stories they live, and then in a passing manner, he has deposed, that in the event of coming of guests, they feel difficulty, which is no-where the case in the pleading. Thus, to put it briefly, there is absolutely no evidence on record, to support the alleged reasonable and bonafide necessity of the residential apartments of the suit premises.

So far the submission made on the anvil of order 12 rule 6, in view of the pleading in the written statement is concerned; in my opinion, this submission has no force.

The defendant in para 12 of the written statement has offered to be ready to vacate the first and second floor of the premises, but then he has no where admitted the reasonable and bonafide requirement of the plaintiff, therefore, until and unless the plaintiff establishes his requirement, may be even by the admission of the defendant, he does not become entitle to the decree for eviction, from that part of the premises, by invoking the provisions of order 12 rule 6 C.P.C.

Another aspect of the matter is that a collective reading of Section 13(1)(h) and Section 14(2) of the Act, coupled with the covering language of Section 13, leaves no manner of doubt, that Court has no jurisdiction whatever to pass a decree for eviction, until and unless one or more grounds, mentioned in Section 13(1) are established, and in the event of ground being one covered by Section 13(1)(h), the further requirement of Section 14(2) are established.

In that view of the matter, to put it clearly, the learned court below was not authorised to pass the decree for eviction from the residential apartments, simply because the defendant offered to be ready to deliver their possession. Thus, the substantial question no. 1, as framed, is answered in favour of the appellant.

Since question no. 1 has been answered in favour

of the appellant, the entire suit for eviction is liable to be dismissed, and therefore, the question no.2 becomes purely academic. It is a different story, that learned counsel for the appellant could not point out any authority of law to substantiate the question, to show, that on the face of the language of Section 14(2), in the event of Court ordering partial eviction, the Court is under obligation to apportion the rent, for the portion allowed to be retained by the tenant.

The net result is, that the appeal is allowed. The impugned judgment & decree, so far as it orders eviction from the first and second floors, is set aside, and the judgment and decree of the learned trial court is restored.

(N P GUPTA),J.

/Sushil/